

**RW FARLEIGHWITT**  
Attorneys

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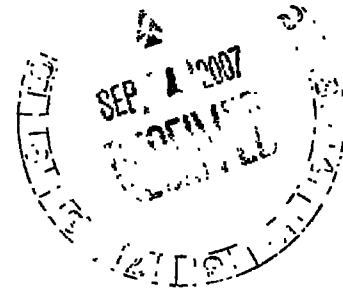
## SURFACE TRANSPORTATION BOARD

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August 27, 2007

Mr. Vernon A. Williams, Secretary  
Surface Transportation Board  
395 E Street, SW  
Washington, DC 20423



Re: *D.B. Western, Inc. - Texas*  
*Mortgage and Commercial Security Agreement*

Dear Secretary Williams:

I have enclosed an original and one counterpart of the document(s) described below, to be recorded pursuant to Section 11301 of Title 49 of the U.S. Code

This document is a Mortgage and Commercial Security Agreement, a primary document, dated August 15, 2007.

The names and addresses of the parties to the documents are as follows:

Mortgagor: D.B. Western, Inc. - Texas  
1360 Airport Lane  
North Bend, OR 97459

Mortgagee: U.S. Bank National Association  
PD-OR-P7LD, Commercial Loan Services  
555 Southwest Oak, Portland  
Oregon 97204.

A description of the equipment covered by the document follows: 40 Trinity tank cars bearing the following identifying markings: DBWX1001 through DBWX1040, inclusive.

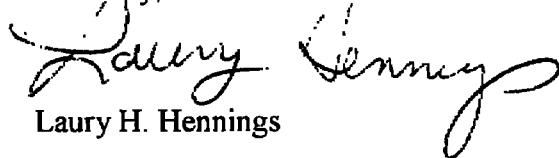
A fee of \$35.00 is enclosed. Please return the original and any extra copies not needed by the Board for recordation to Farleigh Witt, 121 S.W. Morrison Street, Suite 600, Portland, Oregon 97204.

FARLEIGH WITT

Mr. Vernon A. Williams, Secretary  
August 27, 2007  
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A short summary of the document to appear in the index follows: Mortgage and Commercial Security Agreement between D.B. Western, Inc. – Texas (Mortgagor), and U.S. Bank National Association (Mortgagee), covering 40 tank cars owned by Mortgagor.

Sincerely,

A handwritten signature in black ink, appearing to read "Laury Hennings". The signature is fluid and cursive, with the first name "Laury" and the last name "Hennings" clearly distinguishable.

Laury H. Hennings

LHH/jar  
Enclosure  
cc. Susan Fennell w/enclosures  
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SURFACE TRANSPORTATION BOARD

**MORTGAGE AND COMMERCIAL SECURITY AGREEMENT**

THIS MORTGAGE AND COMMERCIAL SECURITY AGREEMENT dated as of August 15, 2007, is entered into between D. B. Western, Inc. – Texas, P.O. Box 50, North Bend, Oregon 97459 ("Grantor" or "Mortgagor"); and U.S. BANK NATIONAL ASSOCIATION, PD-OR-P7LD, 555 S.W. Oak, Portland, OR 97204 ("Bank" or "Mortgagee"). For valuable consideration, Grantor grants to Bank a security interest in the Collateral to secure the Indebtedness and agrees that Bank shall have the rights stated in this Agreement with respect to the Collateral, in addition to all other rights which Bank may have by law.

1. **DEFINITIONS.** The following words shall have the following meanings when used in this Agreement. Terms not otherwise defined in this Agreement shall have the meanings attributed to such terms in the Uniform Commercial Code. All references to dollar amounts shall mean amounts in lawful money of the United States of America.

**"Borrower" or "Borrowers"** means, as the context requires, any one or more of and each and every one of D.B. Western, Inc., D.B. Western, Inc. – Texas, D.B. Western, Inc. – California, and DBW Management Co.

**"Collateral"** means the following described property of Grantor and all products and proceeds thereof, whether now owned or hereafter acquired, whether now existing or hereafter arising, and wherever located: 40 Trinity tank cars bearing the following markings: DBWX1001 through DBWX1040, inclusive.

In addition, **"Collateral"** includes all of the following, whether now owned or hereafter acquired, whether now existing or hereafter arising, and wherever located:

- (a) All attachments, accessions, accessories, tools, parts, supplies, increases, and additions to and all replacements of and substitutions for any property described above.
- (b) All products, produce, and supporting obligations of any of the property described in this Collateral section.
- (c) All accounts, general intangibles, instruments, rents, monies, payments, and all other rights, arising out of a sale, lease, or other disposition of any of the property described in this Collateral section.
- (d) All proceeds (including insurance proceeds) of any of the property described in this Collateral section.
- (e) All records and data relating to any of the property described in this Collateral section, whether in the form of a writing, photograph, microfilm, microfiche, or electronic media, together with all of Grantor's right, title, and interest in and to all computer software required to utilize, create, maintain, and process any such records or data on electronic media.

**"Grantor" or "Mortgagor"** means D. B. Western, Inc. - Texas

**"Guarantor"** means and includes without limitation each and all of the guarantors, sureties, and accommodation parties in connection with the Indebtedness.

**"Indebtedness"** means all present and future indebtedness and obligations of Borrower to Bank which are described in the Loan Agreement, together with all obligations, costs and expenses for which Borrower is responsible under the Loan Agreement, Notes and other Loan Documents. The Indebtedness also includes all other debts, liabilities, obligations, covenants, warranties and duties of Borrower to Bank (including without limitation, principal, interest, fees, charges, costs, expenses and attorney fees); whether now existing or hereafter existing or incurred, including without limitation indebtedness, obligations and claims with respect to term loans, lines of credit, advances, promissory notes, letters of credit, acceptances, treasury management services, interest rate swap, cap, collar, and other interest rate protection agreements, suretyships, guaranties, foreign exchange contracts, endorsements, controlled disbursement accounts and overdrafts of any account of Borrower with Bank; whether voluntary or involuntary, due or not due, direct or indirect, liquidated or unliquidated, absolute or contingent; whether arising out of the Loan Documents or otherwise; whether related in time or type to any other Indebtedness or to the Indebtedness owing, being extended to, or contemplated by the parties at the time this agreement is executed; whether Borrower is liable individually or jointly with others, or liable as guarantor, surety, accommodation party or otherwise; whether recovery upon such Indebtedness may be or hereafter may become barred by any statute of limitations; and whether such Indebtedness may be or hereafter may become unenforceable.

**"Loan Agreement"** means the Amended and Restated Loan Agreement between Borrower, Bank, and Grantor dated June 9, 2006, and any amendments, modifications, supplements, extensions, renewals, substitutions, and replacements thereof or therefor.

**"Loan Documents"** means and include without limitation this Agreement, the Notes, the Loan Agreement, and all promissory notes, credit agreements, loan agreements, environmental agreements, guaranties, security agreements, mortgages, deeds of trust, and all other instruments, agreements and documents, whether now or hereafter existing, executed by any person or entity ("Person") in connection with the Indebtedness.

**"Note" or "Notes"** means any one or more of the following promissory notes executed by Borrowers and payable to Bank, together with any amendments, modifications, supplements, extensions, renewals, substitutions, and replacements thereof or therefor: (a) promissory note dated June 16, 2006, in the principal amount of \$10,500,000.00, (b) promissory note dated June 9, 2006 in the principal amount of \$2,500,000.00, and (c) promissory note dated June 9, 2006, in the principal amount of \$187,435.00.

**2. OBLIGATIONS OF GRANTOR.** Grantor represents and warrants to and agrees with Bank as follows:

**2.1 Authorization.** The execution, delivery, and performance of this Agreement by Grantor have been duly authorized by all necessary action by Grantor and do not conflict with, result in a violation of, or constitute a default under (a) any provision of any articles or agreements relating to entity incorporation, organization or existence, any agreement or other instrument binding upon Grantor or (b) any law, governmental regulation, court decree, or order applicable to Grantor.

**2.2 Perfection of Security Interest.** Grantor shall take any action requested by Bank to preserve the Collateral and the value of the Collateral, and to establish the priority of, perfect, continue the perfection of and enforce Bank's interest in the Collateral and Bank's rights under this Agreement; and shall pay all costs and expenses thereof. Upon request of Bank, Grantor will deliver to Bank any and all of the chattel paper, instruments and documents evidencing or constituting the Collateral, and Grantor will note Bank's interest upon any and all chattel paper if not delivered to Bank for possession by Bank. Grantor hereby appoints Bank as its irrevocable attorney-in-fact for the purpose of executing any documents necessary to perfect or to continue the security interest granted in this Agreement. Grantor authorizes Bank to file such financing statements and to take such other actions as Bank deems necessary or advisable to evidence, perfect, continue, protect or enforce its security interests in the Collateral. This is a continuing Security Agreement and will continue in effect even though all or any part of the Indebtedness is paid in full and even though for a period of time no Indebtedness may be owing to Bank. Grantor shall cooperate with Bank in obtaining control of Collateral consisting of deposit accounts, investment property, letter of credit rights, electronic chattel paper, and any other collateral where Bank may obtain perfection by control. If Collateral is in the possession of a third party, Grantor will join with Bank in notifying the third party of Bank's security interest and obtaining an acknowledgment that it is holding the Collateral for the benefit of Bank. Grantor will cause Bank's security interest to be noted on the certificate of title (or other title document) for any Collateral if such notation is necessary to perfect a security interest in such Collateral and will deliver such title documents to Bank. Grantor and Bank intend to maintain the full effect of any purchase money security interest granted in favor of Bank notwithstanding the fact that the Collateral so purchased is also pledged as security for other Indebtedness under the Loan Documents.

**2.3 Government Contracts.** If any account debtor or contract obligor is the United States of America or any state or any department, agency or instrumentality of the United States or any state, then at Bank's request, Grantor shall promptly notify Bank and execute and deliver to Bank all such additional documents and take all such additional steps as may be required by Bank to assign all payments due and to become due under such accounts and/or contract rights to Bank (including, without limitation, all documents that may be required under the Federal Assignment of Claims Act of 1940, as amended, or under any replacement act) and shall cooperate with Bank in obtaining the acknowledgment and acceptance of the assignment by the appropriate government officers.

**2.4 Name; Location.** Except as disclosed in writing to Bank, Grantor's name and organizational structure have remained the same during the past five (5) years. Grantor will not change its name, do business under any other name, use any trade name or change its chief executive office location or registration (if Grantor is a registered organization) to another state, without giving Bank at least ten (10) days prior written notice thereof. Grantor will not change its status or organizational structure without Bank's prior written consent.

**2.5 Enforceability of Collateral.** All Collateral is genuine and validly existing. Except for items of insignificant value or as otherwise disclosed in writing by Grantor to Bank: (a) Collateral constituting inventory, equipment and fixtures is in good condition, not obsolete and is either currently saleable or usable; and (b) Collateral constituting accounts, contract rights, notes, chattel paper and other third-party obligations to pay is fully enforceable in accordance with its

terms and is not subject to return, dispute, setoff, credit allowance or adjustment, except for discounts for prompt payment, and complies with all applicable laws regarding form, content and manner of preparation and execution and all persons appearing to be obligated thereon have authority and capacity to contract and are obligated as they appear to be on the Collateral. Unless Grantor provides Bank with written notice to the contrary, Grantor has no notice or knowledge of anything that would impair the ability of any third-party obligor to pay any debt to Grantor when due.

**2.6 Location of the Collateral.** Grantor, upon request of Bank, will deliver to Bank in form satisfactory to Bank a schedule of real properties and Collateral locations relating to Grantor's operations, including without limitation the following: (a) all real property owned or being purchased by Grantor; (b) all real property being rented or leased by Grantor; (c) all storage facilities owned, rented, leased, or being used by Grantor; and (d) all other properties where Collateral is or may be located.

**2.7 Removal of Collateral.** Grantor shall keep the Collateral (or to the extent the Collateral consists of intangible property such as accounts, the records concerning the Collateral) at such locations as are acceptable to Bank. Except in the ordinary course of its business, including the sales of inventory, Grantor shall not remove the Collateral from its existing locations without the prior written consent of Bank. To the extent that the Collateral consists of vehicles or other titled property, Grantor shall not take or permit any action which would require application for certificates of title for the vehicles outside the state in which they are currently titled.

**2.8 Transactions Involving Collateral.** Except for (a) inventory sold or accounts collected in the ordinary course of Grantor's business, (b) sales of equipment which is promptly replaced with equipment of equal or greater value, and (c) sales of obsolete equipment for not less than fair market value, Grantor shall not sell, release, offer to sell or lease, or otherwise transfer or dispose of the Collateral. While Grantor is not in default under this Agreement, Grantor may sell inventory, but only in the ordinary course of its business and only to buyers who qualify as a buyer in the ordinary course of business. Title will not pass to buyer until Grantor physically delivers the goods to buyer or Grantor ships the goods F.O.B. to buyer's destination; and sales and/or leases to Grantor's affiliates shall be for fair market value, cash on delivery, with the proceeds remitted to Bank. A sale in the ordinary course of Grantor's business does not include a transfer in partial or total satisfaction of a debt or any bulk sale. Grantor shall not pledge, mortgage, grant a security interest in or otherwise encumber or permit the Collateral to be subject to any lien, security interest, encumbrance, or charge, other than the security interest provided for in this Agreement, without the prior written consent of Bank. This includes security interests even if junior in right to the security interests granted under this Agreement. If required by Bank, all proceeds from any disposition of the Collateral (for whatever reason) shall be held in trust for Bank and shall not be commingled with any other funds; provided however, this requirement shall not constitute consent by Bank to any sale or other disposition. Upon receipt, Grantor shall immediately deliver any such proceeds to Bank.

**2.9 Title.** Grantor is and shall at all times be the sole owner of the Collateral, free of all liens, claims, other encumbrances and security interests, except liens in favor of Bank; and liens existing on the date hereof and specifically disclosed to and accepted by Bank in writing.

**2.10 Collateral Schedules and Locations.** Insofar as the Collateral consists of inventory or equipment, Grantor shall deliver to Bank, as often as Bank shall require, such lists, descriptions, and designations of such Collateral as Bank may require to identify the nature, extent, and location of such Collateral. Such information shall be submitted for Grantor and each of its subsidiaries or related companies.

**2.11 Maintenance and Inspection of Collateral.** Grantor shall maintain all tangible Collateral in good condition and repair. Grantor will not commit or permit damage to or destruction of the Collateral or any part of the Collateral. Bank and its designated representatives and agents shall have the right at all reasonable times to examine, inspect, and audit the Collateral wherever located. Grantor shall immediately notify Bank of all cases involving the return, rejection, repossession, loss or damage of or to any Collateral with a fair market value in excess of \$50,000 individually or in the aggregate; of any request for credit or adjustment or of any other dispute arising with respect to the Collateral with a fair market value in excess of \$50,000 individually or in the aggregate; and generally of all material happenings and events affecting the Collateral or the value or the amount of the Collateral. Grantor has the risk of loss of the Collateral.

**2.12 Taxes, Assessments and Liens.** Grantor will pay when due all taxes, assessments and liens upon the Collateral, its use or operation, upon this Agreement, upon any promissory note or notes evidencing the Indebtedness, or upon any of the other Loan Documents. Grantor may withhold any such payment or may elect to contest any lien if Grantor is in good faith conducting an appropriate proceeding to contest the obligation to pay and so long as Bank's interest in the Collateral is not jeopardized in Bank's sole opinion. If the Collateral is subjected to a lien which is not discharged within fifteen (15) days, Grantor shall deposit with Bank cash, a sufficient corporate surety bond or other security satisfactory to Bank in an amount adequate to provide for the discharge of the lien plus any interest, costs, attorneys' fees or other charges that could accrue as a result of foreclosure or sale of the Collateral. In any contest Grantor shall defend itself and Bank and shall satisfy any final adverse judgment before enforcement against the Collateral. Grantor shall name Bank as an additional obligee under any surety bond furnished in the contest proceedings.

**2.13 Compliance With Governmental Requirements.** Grantor shall comply promptly with all laws, ordinances, rules and regulations of all governmental authorities, now or hereafter in effect, applicable to the ownership, production, disposition, or use of the Collateral. Grantor may contest in good faith any such law, ordinance or regulation and withhold compliance during any proceeding, including appropriate appeals, so long as Bank's interest in the Collateral, in Bank's opinion, is not jeopardized.

**2.14 Hazardous Substances.** Except for such use and storage as is necessary and customary in the conduct of Grantor's or Borrower's business, and which has been and at all times will be conducted in compliance with all Environmental Laws, the Collateral never has been, and never will be so long as this Agreement remains a lien on the Collateral, used for the generation, manufacture, storage, transportation, treatment, disposal, release or threatened release of any hazardous waste or substance, as those terms are defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq. ("CERCLA"), the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499 ("SARA"), the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., the

Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., or other applicable state or Federal laws, rules, or regulations adopted pursuant to any of the foregoing or intended to protect human health or the environment ("Environmental Laws"). The terms "hazardous waste" and "hazardous substance" shall also include, without limitation, petroleum and petroleum by-products or any fraction thereof and asbestos. The representations and warranties contained herein are based on Grantor's due diligence in investigating the Collateral for hazardous wastes and substances. Grantor hereby (a) releases and waives any future claims against Bank for indemnity or contribution in the event Grantor becomes liable for cleanup or other costs under any Environmental Laws, and (b) agrees to indemnify and hold harmless Bank against any and all claims and losses resulting from a breach of this provision of this Agreement, or as a result of a violation of any Environmental Laws. This obligation to indemnify shall survive the payment of the Indebtedness and the satisfaction of this Agreement.

**2.15 Maintenance of Casualty Insurance.** Grantor shall procure and maintain all risks insurance, including without limitation fire, theft and liability coverage together with such other insurance as Bank may require with respect to the Collateral, in form, amounts, coverages and basis reasonably acceptable to Bank and issued by a company or companies reasonably acceptable to Bank. Grantor, upon request of Bank, will deliver to Bank from time to time the policies or certificates of insurance in form satisfactory to Bank, including stipulations that coverages will not be cancelled or diminished without at least thirty (30) days' prior written notice to Bank and not including any disclaimer of the insurer's liability for failure to give such a notice. Each insurance policy also shall include an endorsement providing that coverage in favor of Bank will not be impaired in any way by any act, omission or default of Grantor or any other person. In connection with all policies covering assets in which Bank holds or is offered a security interest, Grantor will provide Bank with such lender's loss payable or other endorsements as Bank may require. If Grantor at any time fails to obtain or maintain any insurance as required under this Agreement, Bank may (but shall not be obligated to) obtain such insurance as Bank deems appropriate, including if it so chooses "single interest insurance", which will cover only Bank's interest in the Collateral.

**2.16 Application of Insurance Proceeds.** Grantor shall promptly notify Bank of any loss or damage to any Collateral with a fair market value in excess of \$50,000 individually or in the aggregate. Bank may make proof of loss if Grantor fails to do so within fifteen (15) days of the casualty. All proceeds of any insurance on the Collateral, including accrued proceeds thereon, shall be held by Bank as part of the Collateral. If Bank consents to repair or replacement of the damaged or destroyed Collateral, Bank shall, upon satisfactory proof of expenditure, pay or reimburse Grantor from the proceeds for the reasonable cost of repair or restoration. If Bank does not consent to repair or replacement of the Collateral, Bank shall retain a sufficient amount of the proceeds to pay all of the Indebtedness, and shall pay the balance to Grantor. Any proceeds which have not been disbursed within six (6) months after their receipt and which Grantor has not committed to the repair or restoration of the Collateral shall be used to prepay the Indebtedness.

**2.17 Insurance Reserves.** If an Event of Default has occurred, Bank may require Grantor to maintain with Bank reserves for payment of insurance premiums, which reserves shall be created by monthly payments from Grantor of a sum estimated by Bank to be sufficient to produce, at least fifteen (15) days before the premium due date, amounts at least equal to the insurance premiums to be paid. If fifteen (15) days before payment is due, the reserve funds are insufficient, Grantor shall



upon demand pay any deficiency to Bank. The reserve funds shall be held by Bank as a general deposit and shall constitute a non-interest-bearing account which Bank may satisfy by payment of the insurance premiums required to be paid by Grantor as they become due. Bank does not hold the reserve funds in trust for Grantor, and Bank is not the agent of Grantor for payment of the insurance premiums required to be paid by Grantor. The responsibility for the payment of premiums shall remain Grantor's sole responsibility.

**2.18 Insurance Reports.** Grantor, upon request of Bank, shall furnish to Bank reports on each existing policy of insurance showing such information as Bank may reasonably request including the following: (a) the name of the insurer; (b) the risks insured; (c) the amount of the policy; (d) the property insured; (e) the then current value on the basis of which insurance has been obtained and the manner of determining that value; and (f) the expiration date of the policy. In addition, Grantor shall, upon request by Bank, have an independent appraiser satisfactory to Bank determine, as applicable, the cash value or replacement cost of the Collateral.

**3. GRANTOR'S RIGHT TO POSSESSION.** Until default and except as otherwise provided below with respect to accounts, Grantor may have possession of the tangible personal property and beneficial use of all the Collateral and may use it in any lawful manner not inconsistent with this Agreement or the Loan Documents, provided that Grantor's right to possession and beneficial use shall not apply to any Collateral where possession of the Collateral by Bank is required by law or requested by Bank to perfect or protect Bank's security interest in such Collateral. Until otherwise notified by Bank, Grantor may collect any of the Collateral consisting of accounts. At any time and even though no Event of Default exists, Bank may exercise its rights to collect the accounts and to notify account debtors to make payments directly to Bank for application to the Indebtedness. Bank shall use reasonable care in the custody and preservation of any Collateral in its physical possession, whether before or after the occurrence of an Event of Default, but in determining such standard of reasonable care, Borrower and Grantor expressly acknowledge that Bank has no duty to: (a) insure the Collateral against hazards; (b) ensure that the Collateral will not cause damage to property or injury to third parties; (c) protect it from seizure, theft or conversion by third parties' claims or acts of God; (d) give to Borrower or Grantor any notices received by Bank regarding the Collateral; (e) perfect or continue perfection of any security interest in favor of Grantor; (f) perform any services, complete any work-in-process or take any other action in connection with the management or maintenance of the Collateral or preserve the value of any Collateral; (g) sue or otherwise effect collection upon any accounts even if Bank shall have made a demand for payment upon individual account debtors; or (h) preserve any rights against any prior party to any chattel paper or instrument of which Bank has possession or control. Notwithstanding any failure by Bank to use reasonable care in preserving the Collateral, Borrower and Grantor agree that Bank shall not be liable for consequential or special damages arising therefrom.

**4. EXPENDITURES BY BANK.** If not discharged or paid when due, Bank may (but shall not be obligated to) discharge or pay any amounts required to be discharged or paid by Grantor or Borrower under this Agreement, including without limitation all taxes, liens, security interests, encumbrances, and other claims, at any time levied or placed on the Collateral. Bank also may (but shall not be obligated to) pay all costs for insuring, maintaining and preserving the Collateral. All such expenditures incurred or paid by Bank for such purposes will then bear interest at the highest rate applicable to the Indebtedness from the date incurred or paid by Bank to the date of repayment.

All such expenses shall become a part of the Indebtedness and will be payable on demand. This Agreement also will secure payment of these amounts. Such right shall be in addition to all other rights and remedies to which Bank may be entitled upon the occurrence of an Event of Default. Any action by Bank hereunder shall not be construed as curing any default so as to bar Bank from any remedy that it would otherwise have.

5. **EVENTS OF DEFAULT.** The occurrence of any Event of Default under the Loan Agreement shall be an Event of Default under this Agreement.

6. **RIGHTS AND REMEDIES ON DEFAULT.** If an Event of Default occurs under this Agreement, at any time thereafter, Bank shall have all the rights of a secured party under the Uniform Commercial Code, including, without limitation, the right to repossess, render unusable and/or dispose of the Collateral without judicial process. In addition and without limitation, Bank may exercise any one or more of the following rights and remedies:

6.1 **Accelerate Indebtedness.** Bank may declare the entire Indebtedness, including any prepayment penalty which would be required, immediately due and payable, without notice.

6.2 **Assemble Collateral; Storage; Use of Grantor's Name/Other Property.** Bank may require Grantor to assemble the Collateral and to make it available to Bank at any location reasonably designated by Bank. Grantor recognizes that Bank will not have an adequate remedy in law if this obligation is breached and, accordingly, Grantor's obligation to assemble the Collateral shall be specifically enforceable. Bank shall have the right to take immediate possession of any Collateral and Grantor irrevocably authorizes Bank to enter any of the premises wherever Collateral shall be located and to store, repair, maintain, assemble, manufacture, advertise and sell, lease or dispose of (by public sale or otherwise) the same on said premises until sold, all without charge or rent to Bank. Bank is hereby granted an irrevocable license to use, without charge, Grantor's equipment, inventory, labels, patents, copyrights, franchises, names, trade secrets, trade names, trademarks and advertising matter and any property of a similar nature; and Grantor's rights under all licenses and franchise agreements shall inure to Bank's benefit. Further, Grantor releases Bank from obtaining a bond or surety with respect to any repossession and/or disposition of the Collateral.

6.3 **Sell the Collateral.** Bank shall have full power to sell, lease, transfer, or otherwise deal with the Collateral or proceeds thereof in its own name or that of Grantor. Bank may sell the Collateral at public auction or private sale in its then present condition or following such preparation and processing as Bank deems commercially reasonable. Bank has no duty to prepare or process the Collateral prior to sale. Bank may disclaim warranties of title, possession, quiet enjoyment and the like. Such actions by Bank shall not affect the commercial reasonableness of the sale. Further, Bank may comply with any applicable state or federal law requirements in connection with a disposition of the Collateral and compliance will not be considered adversely to affect the commercial reasonableness of any sale of the Collateral. If Bank sells any Collateral on credit, Borrower and Grantor will be credited only with payments actually made by the purchaser, received by the Bank and applied to the indebtedness of the purchaser. Unless the Collateral threatens to decline speedily in value or is of a type customarily sold on a recognized market, Bank will give Grantor reasonable notice of the time after which any private sale or any other intended disposition of the Collateral is to be made unless Grantor has signed, after an Event of Default occurs, a

statement renouncing or modifying Grantor's right to notification of sale. The requirements of reasonable notice shall be met if such notice is given at least ten (10) days before the time of the sale or disposition. All expenses relating to the disposition of the Collateral, including without limitation the expenses of retaking, holding, insuring, preparing for sale and selling the Collateral, shall become a part of the Indebtedness secured by this Agreement and shall be payable on demand, with interest at the highest rate applicable to any Indebtedness from date of expenditure until repaid.

**6.4 Possession of Collateral/Commercial Reasonableness.** Bank shall not, at any time, be obligated either to take or retain possession or control of the Collateral. With respect to Collateral in the possession or control of Bank, Grantor, Borrower and Bank agree that as a standard for determining commercial reasonableness, Bank need not liquidate, collect, sell or otherwise dispose of any of the Collateral if Bank believes, in good faith, that disposition of the Collateral would not be commercially reasonable, would subject Bank to third-party claims or liability, that other potential purchasers could be attracted or that a better price could be obtained if Bank held the Collateral for up to one year; and Bank shall not then be deemed to have retained the Collateral in satisfaction of the Obligations.

**6.5 Appoint Receiver.** To the extent permitted by applicable law, Bank shall have the following rights and remedies regarding the appointment of a receiver: (a) Bank may have a receiver appointed as a matter of right, (b) the receiver may be an employee of Bank and may serve without bond, and (c) all fees of the receiver and his or her attorney shall become part of the Indebtedness secured by this Agreement and shall be payable on demand, with interest at the highest rate applicable to any Indebtedness from date of expenditure until repaid.

**6.6 Collect Revenues, Apply Accounts and Deposit Accounts.** Bank, either itself or through a receiver, may collect the payments, rents, income, and revenues from the Collateral. Bank may at any time in its discretion transfer any Collateral into its own name or that of its nominee and receive the payments, rents, income, and revenues therefrom and hold the same as security for the Indebtedness or apply it to payment of the Indebtedness in such order of preference as Bank may determine. Insofar as the Collateral consists of accounts, general intangibles, insurance policies, instruments, chattel paper, choses in action, or similar property, Bank may demand, collect, receipt for, settle, compromise, adjust, sue for, foreclose, or realize on the Collateral as Bank may determine, whether or not Indebtedness or Collateral is then due. For these purposes, Bank may, on behalf of and in the name of Grantor, receive, open and dispose of mail addressed to Grantor; change any address to which mail and payments are to be sent; and endorse notes, checks, drafts, money orders, documents of title, instruments and items pertaining to payment, shipment, or storage of any Collateral. To facilitate collection, Bank may notify account debtors and obligors on any Collateral to make payments directly to Bank. If any deposit account is subject to an early withdrawal penalty, that penalty shall be deducted from such account before its application to the Indebtedness, whether such deposit account is with Bank or some other institution.

**6.7 Obtain Deficiency.** If Bank chooses to sell any or all of the Collateral, Bank may obtain a judgment against Borrower or Grantor for any deficiency remaining on the Indebtedness due to Bank after application of all amounts received from the exercise of the rights provided in this Agreement. Borrower and Grantor shall be liable for a deficiency even if the transaction described in this subsection is a sale of accounts or chattel paper.

**6.8 Other Rights and Remedies.** Bank shall have all the rights and remedies of a secured creditor under the provisions of the Uniform Commercial Code, as it may be amended from time to time. In addition, Bank shall have and may exercise any or all other rights and remedies it may have available under the Loan Documents, at law, in equity or otherwise.

**6.9 Cumulative Remedies.** All of Bank's rights and remedies, whether evidenced by this Agreement or the Loan Documents or by any other writing, shall be cumulative and may be exercised singularly or concurrently. Election by Bank to pursue any remedy shall not exclude pursuit of any other remedy, and an election to make expenditures or to take action to perform an obligation of Grantor or Borrower under this Agreement, after Grantor or Borrower's failure to perform, shall not affect Bank's right to declare a default and to exercise its remedies.

**7. CREDIT BALANCES; SETOFF.** As additional security for the payment of the Indebtedness, Grantor hereby grants to Bank a security interest in, a lien on and an express contractual right to set off against all depository account balances, cash and any other property of Grantor now or hereafter in the possession of Bank and the right to refuse to allow withdrawals from any account ("Setoff"). Bank may, at any time upon the occurrence of a default hereunder (notwithstanding any notice requirements or grace/cure periods under this or other agreements between Borrower or Grantor and Bank) Setoff against the Indebtedness whether or not the Indebtedness (including future installments) are then due or have been accelerated, all without any advance or contemporaneous notice or demand of any kind to Grantor or Borrower, such notice and demand being expressly waived.

**8. BORROWER'S WAIVERS AND RESPONSIBILITIES.** Except as otherwise required under this Agreement or by applicable law, (a) each Borrower agrees that Bank need not tell such Borrower about any action or inaction Bank takes in connection with this Agreement; (b) each Borrower assumes the responsibility for being and keeping informed about the Collateral; (c) each Borrower waives any defenses that may arise because of any action or inaction of Bank, including without limitation any failure of Bank to realize upon the Collateral or any delay by Bank in realizing upon the Collateral; and (d) each Borrower waives any right to require Bank to pursue any other person for satisfaction of any Indebtedness; and Borrower agrees to remain liable on the Indebtedness no matter what action Bank takes or fails to take under this Agreement.

**9. GRANTOR'S REPRESENTATIONS AND WARRANTIES.** Grantor warrants that: (a) Grantor has the full right, power and authority to enter into this Agreement and to pledge the Collateral to Bank; (b) Grantor has established adequate means of obtaining from each Borrower on a continuing basis information about such Borrower's financial condition; and (c) Bank has made no representation to Grantor about Borrower or any Borrower's creditworthiness.

**10. GRANTOR'S WAIVERS.** Grantor waives all requirements of presentment, protest, demand, and notice of dishonor or non-payment to Grantor, any Borrower, or any other party to the Indebtedness or the Collateral and waives all defenses based on suretyship or impairment of Collateral. Without notice to Grantor and without diminishing or affecting Bank's rights or any Borrower's or Grantor's obligations hereunder, Bank may deal in any manner with any person who at any time is liable for, or provides any real or personal property collateral for, any indebtedness or obligations of any Borrower or Grantor to Bank, including the Indebtedness. Without limiting the

foregoing, Bank may, in its sole discretion: (a) make secured or unsecured loans to any one or more of the Borrowers and agree to any number of waivers, modifications, extensions and renewals of any length of such loans; (b) impair, release (with or without substitution of new collateral), fail to perfect a security interest in, fail to preserve the value of, fail to dispose of in accordance with applicable law, any collateral provided by any person; (c) sue, fail to sue, agree not to sue, release, and settle or compromise with, any person.

If now or hereafter (a) any Borrower shall be or become insolvent, and (b) the Indebtedness shall not at all times until paid be fully secured by collateral pledged by such Borrower, Grantor hereby forever waives and relinquishes in favor of Bank and such Borrower, and their respective successors, any claim or right to payment Grantor may now have or hereafter have or acquire against such Borrower, by subrogation or otherwise, so that at no time shall Grantor be or become a "creditor" of Borrower within the meaning of any provision of the Federal bankruptcy laws.

## **11. MISCELLANEOUS PROVISIONS.**

**11.1 Amendments.** This Agreement, together with the other Loan Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration of or amendment to this Agreement shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

**11.2 Governing Law; Jurisdiction.** Except to the extent that Bank has greater rights and remedies under federal law or as specifically set forth in any Loan Document, this Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Oregon without regard to conflicts of law principles (except that matters concerning the validity and perfection of security interests covered thereby shall be governed by the conflicts of law provisions of the Uniform Commercial Code). Borrower and Grantor hereby consent to the jurisdiction of any state or federal court located in or with jurisdiction over Lane County, Oregon with regard to any actions, claims, disputes or proceedings arising from or related to this Agreement; provided, however that this shall not affect Bank's right to bring proceeding against Borrower or Grantor in the competent courts of any other jurisdiction. To the fullest extent that it may legally do so, each Borrower and Grantor waives any objection which it may now or hereafter have to the laying of venue in any such court, including without limitation any objection based on the doctrine of *forum non conveniens*

**11.3 Attorney Fees; Expenses.** Grantor and Borrower agree to pay upon demand all of Bank's costs and expenses, including attorney fees and Bank's legal expenses, incurred in connection with the preparation, administration, amendment and enforcement of this Agreement, and all costs of perfecting, protecting, continuing and enforcing Bank's security interest in the Collateral. Notwithstanding the foregoing, if any suit or action is commenced to construe or to enforce any of the terms of this Agreement, the prevailing party shall be entitled to recover its costs thereof, including such sums as the court may adjudge reasonable as attorney fees. As used herein, "attorney fees" include attorney fees whether or not there is a lawsuit and includes without limitation attorney fees at trial, in any appellate proceeding, proceeding under the bankruptcy code (including efforts to modify or vacate any automatic stay or injunction) or receivership, and post-judgment fees of enforcing any judgment.

**11.4 Caption Headings.** Caption headings in this Agreement are for convenience purposes only and are not to be used to interpret or define the provisions of this Agreement.

**11.5 Multiple Parties.** All obligations of Grantor and Borrower under this Agreement shall be joint and several, and all references to Borrower shall mean each and every Borrower, and all references to Grantor shall mean each and every Grantor.

**11.6 Notices.** All notices required to be given under this Agreement shall be given in writing, may be sent by telefacsimile (unless otherwise required by law), and shall be effective when actually delivered or when deposited with a nationally recognized overnight courier or deposited in the United States mail, first class, postage prepaid, addressed to the party to whom the notice is to be given at the address shown above. Any party may change its address for notices under this Agreement by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. To the extent permitted by applicable law, if there is more than one Grantor or Borrower, notice to any Grantor or Borrower will constitute notice to all Grantor and Borrowers. For notice purposes, Grantor and Borrower will keep Bank informed at all times of Grantor and Borrower's current address(es).

**11.7 Power of Attorney.** Grantor hereby appoints Bank as its true and lawful attorney-in-fact, irrevocably, with full power of substitution to do the following: (a) to demand, collect, receive, receipt for, sue and recover all sums of money or other property which may now or hereafter become due, owing or payable from the Collateral; (b) to execute, sign and endorse any and all claims, instruments, receipts, checks, drafts or warrants issued in payment for the Collateral; (c) to settle or compromise any and all claims arising under the Collateral, and, in the place and stead of Grantor, to execute and deliver its release and settlement for the claim; and (d) to file any claim or claims or to take any action or institute or take part in any proceedings, either in its own name or in the name of Grantor, or otherwise, which in the discretion of Bank may seem to be necessary or advisable. This power is given as security for the Indebtedness, is coupled with an interest, and the authority hereby conferred is and shall be irrevocable and shall remain in full force and effect until renounced by Bank.

**11.8 Preference Payments.** Any monies Bank pays because of an asserted preference claim in Grantor's or Borrower's bankruptcy will become a part of the Indebtedness and, at Bank's option, shall be payable as provided in Section 4.

**11.9 Severability.** If a court of competent jurisdiction finds any provision of this Agreement to be invalid or unenforceable as to any person or circumstance, such finding shall not render that provision invalid or unenforceable as to any other persons or circumstances. If feasible, any such offending provision shall be deemed to be modified to be within the limits of enforceability or validity; however, if the offending provision cannot be so modified, it shall be stricken and all other provisions of this Agreement in all other respects shall remain valid and enforceable.

**11.10 Successor Interests.** Subject to the limitations set forth above on transfer of the Collateral, this Agreement shall be binding upon and inure to the benefit of the parties, their successors and assigns.

**11.11 Waiver.** Bank shall not be deemed to have waived any rights under this Agreement unless such waiver is given in writing and signed by Bank. No delay or omission on the part of Bank in exercising any right shall operate as a waiver of such right or any other right. A waiver by Bank of a provision of this Agreement shall not prejudice or constitute a waiver of Bank's right otherwise to demand strict compliance with that provision or any other provision of this Agreement. No prior waiver by Bank, nor any course of dealing between Bank and Grantor or Borrower, shall constitute a waiver of any of Bank's rights or of any of Grantor's or Borrower's obligations as to any future transactions. Whenever the consent of Bank is required under this Agreement, the granting of such consent by Bank in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the sole discretion of Bank.

**11.12 Waiver of Co-Obligor's Rights.** If more than one person is obligated for the Indebtedness, Borrower and Grantor irrevocably waive, disclaim and relinquish all claims against such other person which Borrower or Grantor has or would otherwise have by virtue of payment of the Indebtedness or any part thereof, specifically including but not limited to all rights of indemnity, contribution or exoneration.

**11.13 Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which taken together shall constitute one document.

**11.14 Insurance Disclosure.**

#### **WARNING**

Unless you (Grantor) provide us (Bank) with evidence of insurance coverage as required by our agreements, we may purchase insurance at your expense to protect our interest. This insurance may, but need not, also protect your interest. If the collateral becomes damaged, the coverage we purchase may not pay any claim you make or any claim made against you. You may later cancel this coverage by providing evidence that you have obtained property coverage elsewhere.

You are responsible for the cost of any insurance purchased by us. The cost of this insurance may be added to your loan balance. If the cost is added to your loan balance, the interest rate on the underlying loan will apply to this added amount. The effective date of coverage may be the date your prior coverage lapsed or the date you failed to provide proof of coverage.

The coverage we purchase may be considerably more expensive than insurance you can obtain on your own and may not satisfy any need for property damage coverage or any mandatory liability insurance requirements imposed by applicable law.

**12. WAIVER OF JURY TRIAL. GRANTOR, BORROWER AND BANK HEREBY JOINTLY AND SEVERALLY WAIVE ANY AND ALL RIGHT TO TRIAL BY JURY IN**

ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT, ALL DOCUMENTS RELATING TO THIS AGREEMENT, AND THE OBLIGATIONS HEREUNDER OR ANY TRANSACTION ARISING HEREFROM OR CONNECTED HERETO. EACH OF THEM REPRESENTS THAT THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY GIVEN.

D.B. WESTERN, INC. - TEXAS

By: [Signature]

Title: President

U.S. BANK NATIONAL ASSOCIATION

By: [Signature]

Title: President

[Signature]  
SVP/RM

### ACKNOWLEDGMENT AND CONSENT OF BORROWERS

Each Borrower other than Grantor hereby acknowledges and consents to and agrees to be bound by all terms, conditions and obligations applicable to a Borrower or Borrowers under the foregoing Mortgage and Commercial Security Agreement.

D.B. WESTERN, INC.

By: [Signature]

Title: President

D.B. WESTERN, INC. - CALIFORNIA

By: [Signature]

Title: President

DBW MANAGEMENT CO.

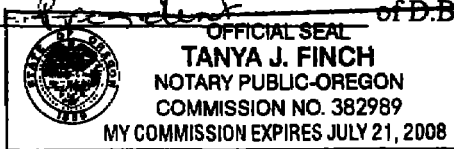
By: [Signature]

Title: President



STATE OF OREGON )  
 ) ss.  
County of Cos

This instrument was acknowledged before me on this 15 day of August, 2007, by Dennis Beetham as President of D.B. Western, Inc. - Texas.



Tanya J. Finch  
Notary Public for Oregon  
My Commission Expires: July 21, 2008

STATE OF OREGON )  
 ) ss.  
County of Lane

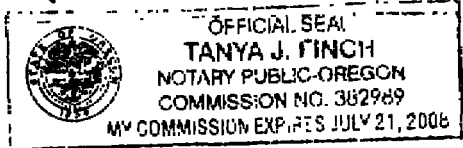
This instrument was acknowledged before me on this 15th day of August, 2007, by DAVID E ANDERSON as CR. V.P. of U.S. Bank National Association.



STATE OF OREGON )  
 ) ss.  
County of Cos

Susan S. Fennell  
Notary Public for Oregon  
My Commission Expires: Sept. 16, 2009

This instrument was acknowledged before me on this 15th day of August, 2007, by Dennis Beetham as President of D.B. Western, Inc.



Tanya J. Finch  
Notary Public for Oregon  
My Commission Expires: July 21, 2008

STATE OF OREGON )  
 ) ss.  
County of Cos

This instrument was acknowledged before me on this 15th day of August, 2007, by Dennis Beetham as President of D.B. Western, Inc. - California.



Tanya J. Finch  
Notary Public for Oregon  
My Commission Expires: July 21, 2008

STATE OF OREGON           )  
  ) ss.  
County of Cook )

This instrument was acknowledged before me on this 15<sup>th</sup> day of August, 2007, by Dennis Beetham as President of DBW Management Co.

Tanya J. Finch  
Notary Public for Oregon  
My Commission Expires: July 21, 2008

